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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JOSE GERALDO CASAS,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

E047661

(Super.Ct.Nos. FVI021015 &
FVI702408)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Petition granted.

Dennis L. Cava for Petitioner.

No appearance for Respondent.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Gary W. Schons, Assistant Attorney General, Peter Quon, Jr., and
Angela M. Borzachillo, Deputy Attorneys General, for Real Party in Interest.

Petitioner seeks a writ of mandate challenging respondent court's order denying his request for a certificate of probable cause. (Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b).) We have reviewed the petition and the opposition thereto that we conclude adequately address the issues raised by the petition. We have determined that the trial court abused its discretion by denying the application for a certificate of probable cause. Because the resolution of the matter involves the application of settled principles of law, we issue a peremptory writ of mandate granting petitioner the requested relief. (*Palma v. U. S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

In order to appeal from a judgment of conviction in the superior court following a plea of guilty or nolo contendere, a defendant must ordinarily comply with the provisions of Penal Code section 1237.5, requiring a certificate of probable cause from the trial court and a written statement by defendant showing reasonable constitutional, jurisdictional or other grounds going to the legality of the proceedings.

This court previously granted a writ of habeas corpus and directed the superior court to consider petitioner's notice of appeal timely, if he filed it within 20 days of the date of the order. Petitioner did file a notice of appeal within the specified time limit. Along with the notice of appeal, petitioner also filed a request for certificate of probable cause.¹ The superior court denied that request so that petitioner now seeks a writ of mandate to direct the lower court to issue a certificate of probable cause. Review by writ

¹ Because the request was filed within the time limit for filing the notice of appeal, we consider the request to be timely. (Cf. *People v. Mendez* (1999) 19 Cal.4th 1084.)

of mandate is, indeed, the appropriate remedy. (See *In re Brown* (1973) 9 Cal.3d 679, 683, disapproved on another point in *People v. Mendez* (1999) 19 Cal.4th 1084, 1097, fn. 7.)

Penal Code section 1237.5 requires the trial court to certify any arguably meritorious appeal to the appellate courts. Thus, if the statement submitted by the defendant in accordance with Penal Code section 1237.5 presents any cognizable issue for appeal that is not clearly frivolous and vexatious, the trial court abuses its discretion if it fails to issue a certificate of probable cause. (See *In re Brown, supra*, 9 Cal.3d at p. 683, fn. 6; *People v. Holland* (1978) 23 Cal.3d 77, 84-85, disapproved on another point in *People v. Mendez, supra*, 19 Cal.4th at p. 1097, fn. 7.)

The trial court is empowered to review the statement of the grounds of the appeal to preclude those appeals that raise no issues cognizable after a guilty plea, or which raise cognizable issues that are clearly frivolous and vexatious. It is not the trial court's responsibility to determine if there was an error in the proceedings. The trial court's sole objective is to eliminate those appeals having no possible legal basis by refusing to issue a certificate of probable cause.

Petitioner asserts that he was not advised of his constitutional right to a hearing before admitting a *Cruz*² waiver violation. He contends, therefore, that his admission was null and void and, accordingly, the trial court improperly sentenced him to state prison for the upper term.

² *People v. Cruz* (1988) 44 Cal.3d 1247.

A certificate of probable cause is required to raise this issue. (*People v. Puente* (2008) 165 Cal.App.4th 1143, 1150.) While we do not determine the merits of defendant's contention, it is not clearly frivolous. Accordingly, we must conclude that the trial court abused its discretion in failing to issue a certificate of probable cause.

DISPOSITION

Let a peremptory writ of mandate issue directing the Superior Court of San Bernardino County to vacate its order denying petitioner's application for certificate of probable cause and issue a new order granting the application.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

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HOLLENHORST
Acting P. J.

We concur:

KING
J.

GAUT
J.